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EX PARTE OR LATE FILED



March 14, 2000

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket. No. 96-98

Dear Ms. Salas:

Yesterday at two separate meetings, Ms. H. Gold, representing Intermedia Communications, Ms. K. Reeves, representing Time Warner Telecom, and Mr. F. Gumper and I, representing Bell Atlantic, met with Ms. S. Whitesell, Legal Advisor to Commissioner Tristani and Ms. R. Beynon, Legal Advisor to Commissioner Furchtgott-Roth. The purpose of the meetings was to discuss these companies' positions regarding the circumstances under which carriers may purchase loop/transport combinations as unbundled network elements. The participants used as a basis for discussion the ex parte letter signed by these and other companies and filed with the Commission on February 29, 2000 in the above referenced proceeding.

The representatives also expressed their view that the Supplemental Order did not change the Commission's prior requirement limiting the availability of combinations of network elements to collocation arrangements. This position is presented in the attached paper.

In accordance with Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this notice are being submitted to the Secretary.

Sincerely,

A handwritten signature in cursive script that reads 'Susanne Guyer'.

cc: S. Whitesell
R. Beynon

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Collocation Is Required For Conversion Of Special Access Circuits To Combinations Of Network Elements

In the wake of the Federal Communication Commission's UNE Remand decisions, some carriers have argued that they are entitled to convert special access circuits between their points of presence and their customers' locations to combinations of network elements. This is not the case. The Commission has allowed carriers to convert special access circuits only between their collocation arrangements and their customers' premises, and only where the carriers are using them to provide a significant amount of local exchange services to their customers.

Third Report and Order. In the Commission's first UNE Remand decision, the Commission recognized that allowing carriers to combine network elements without restrictions could lead to the substitution of network element combinations for existing special access services. The Commission also recognized that there were significant policy issues that should be resolved before allowing such substitution to occur: "We believe that we should fully explore the policy ramifications of applying our rules in a way that potentially could cause a significant reduction of the incumbent LECs' special access revenues prior to full implementation of access charge and universal service reform." Third Report and Order, ¶ 489. The Commission therefore preserved the status quo and issued a further notice of proposed rulemaking to resolve these policy issues.

To preserve the status quo pending the further rulemaking, the Commission held that carriers could obtain combinations of network elements only between a collocation arrangement and a customer premises: "any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements because those elements meet the unbundling standard, as discussed above." Third Report and Order, ¶ 486 (emphasis supplied). The Commission did not authorize carriers to obtain combinations of network elements between their points of presence or switches and their customers' premises.

Supplemental Order. After the release of the Third Report and Order, several incumbent carriers argued that the Commission did not adequately preserve the status quo pending the further rulemaking. As the Commission explained, they specifically contended "that paragraph 486 [of the Third Report and Order] allows collocated IXCs that self provision entrance facilities (or obtain them from third parties) to convert the remaining portions of their special access circuits to

unbundled network elements, even through the IXC's are not using the facilities to provide local exchange service." Supplemental Order, ¶ 4.

In explicit response to the incumbents' arguments, the Commission issued its Supplemental Order to better "preserve" the status quo pending its further rulemaking. Supplemental Order, ¶ 4. It did so by imposing an additional requirement on carriers that wish to substitute combinations of network elements for existing special access services. The additional requirement is that a carrier may use combinations of unbundled loop and transport elements only "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." Supplemental Order, ¶ 5. In its discussion of what would constitute a "significant" amount of local exchange service, the Commission referenced an *ex parte* filed by a group that included both CLECs and an ILEC. Supplemental Order, ¶ 5, n. 9. Conversions of special access to UNEs in that *ex parte* was predicated on a collocation requirement.

By adding an additional requirement on the availability of combinations of network elements, the Commission did not change its prior requirement limiting the availability of combinations of network elements to collocation arrangements. The only concerns addressed in the order were those of the ILECs seeking an additional safeguard – the collocation requirement was not addressed or altered. The Commission simply held that even where a carrier obtains special access services at a collocation arrangement, it may not convert those services to combinations of network elements unless it provides a significant amount of local exchange services to the customer.

Accordingly, under the Commission's UNE Remand orders, a carrier may convert an existing special access service to a combination of network elements only where (1) the service is connected to an existing collocation arrangement **AND** (2) the combination of network elements will be used to provide a significant amount of the customer's local exchange service.